



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2005

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75185-0137

OR2005-03356

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222327.

The Mesquite Police Department (the "department") received a request for all call sheets and reports from two specific addresses from August 2002 through July 2004. You claim that portions of the responsive information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or

developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because Exhibit #2 consists of files, reports, records, communications, or working papers used or developed in investigations under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, Exhibit #2 is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold Exhibit #2 from disclosure under section 552.101 of the Government Code as information made confidential by law.

You claim that Exhibit #3 contains information that is confidential under section 552.101 of the Government Code in conjunction with chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Section 772.118 applies only to an emergency 9-1-1 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). This statute makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *Id.* at 2. You state that the City of Mesquite is part of an emergency communication district that was established under section 772.118 and indicate that the 9-1-1 callers' telephone numbers and addresses were provided to the city by a service provider.¹ Thus, based on your representations, we determine that the addresses and telephone numbers of the 9-1-1 callers you have marked in Exhibit #3 are excepted from public disclosure under section 552.101 in conjunction with section 772.118 of the Health and Safety Code.

You also claim that some of Exhibit #3 is protected by common-law privacy, which is also encompassed by section 552.101 of the Government Code. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We have reviewed Exhibit #3 and agree that most of the personal financial information you have marked must be withheld under section 552.101 in conjunction with common-law privacy. We note, however, that pursuant to section 552.023 of the Government Code, the requestor has a special right of access to information that is excepted from public disclosure under laws intended to protect the requestor's own privacy interest. Thus, the department may not withhold the requestor's personal financial information under section 552.101 in conjunction

¹Section 772.118 applies to an emergency communication district for a county with a population of more than two million.

with common-law privacy grounds.² See Gov't Code § 552.023; see also Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual asks governmental body to provide him with information concerning himself). In addition, this office has found that information compiled by a law enforcement agency that depicts a particular individual as a criminal suspect, arrestee, or defendant takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). After reviewing the submitted information, we agree that some of the information you have marked implicates the privacy concerns expressed in *Reporters Committee* and must be withheld under section 552.101 of the Government Code. However, we find some of the information that you have marked may not be withheld on this basis. We have marked the documents accordingly.

We note that Exhibit #3 contains social security numbers. Social security numbers or "related records" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* However, we note that the laws making social security numbers confidential are based on privacy concerns. Thus, here, the requestor has a special right of access to her own social security number, and the department may not withhold that information from her under section 552.101 in conjunction with the federal law. As for the remaining social security numbers, you have not cited a law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes you to obtain or maintain social security numbers. Thus, we have no basis for concluding that the remaining social security numbers in Exhibit #3 are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Government Code on the basis of that federal provision. We caution that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that they were not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

You also claim that Exhibit #3 contains information that is protected under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

- (a) Information is excepted from required public disclosure if the information relates to:

²We note, however, that because this requestor has a special right of access to some of the information at issue under section 552.023, in the event the department receives another request for this information from someone other than this requestor or her authorized representative, the department must ask this office for a decision whether the information is subject to public disclosure.

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We note, however, that section 552.130 protects privacy interests. Since the requestor has a right of access to her own Texas-issued motor vehicle record information, the department may not withhold her information. *See* Gov't Code § 552.023. Thus, after reviewing Exhibit #3, we agree that you must withhold most of the information you have marked under section 552.130 of the Government Code. We have marked the information that may not be withheld under section 552.130 of the Government Code.

In summary, the department must withhold Exhibit #2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The department must withhold the addresses and telephone numbers of the 9-1-1 callers you have marked in Exhibit #3 under section 552.101 in conjunction with section 772.118 of the Health and Safety Code. We have marked the information that may not be withheld under common-law privacy, but the department must withhold the other information you have marked under section 552.101 in conjunction with common-law privacy. The social security numbers of the individuals other than the requestor in Exhibit #3 may be confidential under federal law. Additionally, the Texas-issued motor vehicle information of individuals other than the requestor must be withheld under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

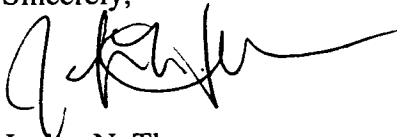
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krf

Ref: ID# 222327

Enc. Submitted documents

c: Ms. Della Shelton
323 Valley Park Drive
Garland, Texas 75043
(w/o enclosures)